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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

11 PATRICIA C.,¹

12 Plaintiff,

13 v.

14 LELAND DUDEK,²
15 Commissioner of Social Security,

16 Defendant.
17

Case No. 2:23-cv-09195-MAA

**MEMORANDUM DECISION AND
ORDER REVERSING DECISION OF
THE COMMISSIONER AND
REMANDING FOR FURTHER
ADMINISTRATIVE PROCEEDINGS**

18 **I. INTRODUCTION**

19 On November 1, 2023, Plaintiff Patricia C. (“Plaintiff”) filed a Complaint
20 seeking review of Defendant Commissioner of Social Security’s (“Commissioner”
21 or “Defendant”) final decision denying her application for disability insurance
22 benefits and supplemental security income under Titles II and XVI of the Social
23

24 ¹ Plaintiff’s name is partially redacted in accordance with Federal Rule of Civil
25 Procedure 5.2(c)(2)(B) and the recommendation of the Committee on Court
26 Administration and Case Management of the Judicial Conference of the United
States.

27 ² Leland Dudek became Acting Commissioner of Social Security on February 17,
28 2025. Under Federal Rule of Civil Procedure 25(d), he is automatically substituted
for Kilolo Kijakazi as Defendant in this suit.

1 Security Act. (Compl., ECF No. 1.) Pursuant to 28 U.S.C. § 636(c), the parties
 2 consented to the jurisdiction of a United States Magistrate Judge. (ECF Nos. 5, 9.)
 3 On January 2, 2024, Defendant filed an Answer (Answer, ECF No. 7) and Certified
 4 Administrative Record (“AR,” ECF Nos. 7-1–7-15). On March 25, 2024, Plaintiff
 5 filed a Brief. (Pl.’s Br., ECF No. 13.) On April 24, 2024, Defendant filed a
 6 Response Brief. (Def.’s Br., ECF No. 15.) On April 29, 2024, Plaintiff filed a
 7 Reply Brief. (Pl.’s Reply Br., ECF No. 16.) This matter is fully briefed and ready
 8 for decision.

9 The Court deems the matter appropriate for resolution without oral argument.
 10 *See* Fed. R. Civ. P. 78(b); C.D. Cal. L.R. 7-15. For the reasons discussed below, the
 11 Court reverses the decision of the Commissioner and remands the matter for further
 12 administrative proceedings.

13 14 **II. SUMMARY OF ADMINISTRATIVE PROCEEDINGS**

15 On September 7, 2017, Plaintiff filed a Title II application for a period of
 16 disability and disability insurance benefits, alleging disability beginning December
 17 23, 2016. (AR 161–67.)³ The Commissioner denied this claim on December 19,
 18 2017. (AR 87–91.) On January 23, 2018, Plaintiff requested a hearing before an
 19 Administrative Law Judge (“ALJ”). (AR 94–95.) On February 7, 2018, Plaintiff
 20 filed a Title XVI application for supplemental security income. (AR 168–78.)

21 ALJ Deborah Van Vleck conducted a video teleconference hearing on
 22 January 20, 2020. (AR 30–72.) On March 9, 2020, ALJ Van Vleck issued an
 23 unfavorable decision finding Plaintiff “not disabled” at all relevant times, with the
 24 residual functional capacity to perform a wide range of light work. (AR 12–29.)
 25 Plaintiff appealed, but the Appeals Council denied her request for review. (AR 1–

26
 27 ³ Citations to the Administrative Record are to the AR number. Pinpoint citations
 28 to other docketed documents are to the page numbers in the CM/ECF-generated
 headers.

1 6.) Plaintiff filed a civil action in this Court on August 17, 2020, which the
2 undersigned remanded to the Social Security Administration for further proceedings
3 pursuant to the parties' joint stipulation for remand. *Carrillo v. Saul*, Case No.
4 2:20-cv-07415-MAA (C.D. Cal. Apr. 1, 2021), ECF No. 15.

5 On remand, two additional hearings were held: one on June 1, 2022 (AR
6 423–32) and one on March 27, 2023 (AR 433–68), both before ALJ Sally C.
7 Reason. Over the course of the two hearings, the ALJ heard testimony from
8 Plaintiff, who was represented by counsel, from three impartial medical experts,
9 and from an impartial vocational expert. (AR 423–68.) Plaintiff testified at the
10 March 27, 2023 hearing. (AR 448–460.) On April 24, 2023, ALJ Reason, after
11 making the following findings under the Commissioner's five-step evaluation
12 process, issued a decision finding that Plaintiff was not disabled. (AR 407–417.)

13 At step one, the ALJ found that Plaintiff had not engaged in substantial
14 gainful activity since December 23, 2016. (AR 410 ¶ 2.) At step two, the ALJ
15 found that Plaintiff had the following severe impairments: “degenerative disc
16 disease of the lumbar spine, status-post laminectomy and spinal stimulator
17 implantation.” (AR 410 ¶ 3.) At step three, the ALJ found that Plaintiff did not
18 have an impairment or combination of impairments that met or medically equaled
19 the severity of one of the agency's listed impairments. (AR 412 ¶ 4.) Next, the
20 ALJ found that Plaintiff had the following Residual Functional Capacity (“RFC”):

21 [T]he claimant has the residual functional capacity to
22 perform light work as defined in 20 CFR 404.1567(b)
23 and 416.967(b) with the following additional limitations:
24 she can frequently use her feet for pushing and/or
25 pulling; she can frequently climb stairs, balance, and
26 kneel; she can only occasionally stoop, crouch, and
27 crawl, and climb ladders, ropes, and scaffolds; and she
can only occasionally work at unprotected heights and
around heavy machinery.

28 (AR 412 ¶ 5.)

1 At step four, the ALJ found that Plaintiff was able to perform past relevant
2 work “as a manager, fast-food services.” (AR 416 ¶ 6.) The ALJ concluded
3 Plaintiff had “not been under a disability, as defined by the Social Security Act,
4 from December 23, 2016,” the alleged onset date, through April 24, 2023, the date
5 of the ALJ’s decision. (*Id.* ¶ 7.) Plaintiff filed written exceptions with the Appeals
6 Council, which declined to assume jurisdiction on September 19, 2023. (*See* Pl.’s
7 Br. 2; Def.’s Br. 6.)

8 9 **III. STANDARD OF REVIEW**

10 Pursuant to 42 U.S.C. § 405(g), the Court reviews the Commissioner’s final
11 decision to determine whether the Commissioner’s “decision to deny benefits . . .
12 ‘is not supported by substantial evidence or is based on legal error.’” *Treichler v.*
13 *Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1098 (9th Cir. 2014) (quoting *Andrews*
14 *v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995)). “‘Substantial evidence’ means
15 more than a mere scintilla, but less than a preponderance; it is such relevant
16 evidence as a reasonable person might accept as adequate to support a conclusion.”
17 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (quoting *Robbins v.*
18 *Soc. Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006)); *see also Richardson v.*
19 *Perales*, 402 U.S. 389, 401 (1971). The Court “must consider the record as a
20 whole, weighing both the evidence that supports and the evidence that detracts from
21 the Commissioner’s conclusion, and may not affirm simply by isolating a specific
22 quantum of supporting evidence.” *Garrison v. Colvin*, 759 F.3d 995, 1009 (9th Cir.
23 2014) (quoting *Lingenfelter*, 504 F.3d at 1035). “‘Where evidence is susceptible to
24 more than one rational interpretation,’ the ALJ’s decision should be upheld.” *Orn*
25 *v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007) (quoting *Burch v. Barnhart*, 400 F.3d
26 676, 679 (9th Cir. 2005)). “If the evidence can support either affirming or reversing
27 the ALJ’s conclusion, [a court] may not substitute [its] judgment for that of the
28 ALJ.” *Robbins*, 466 F.3d at 882.

IV. DISCUSSION

A. Disputed Issues

Plaintiff raises two disputed issues:

1. Whether the ALJ committed reversible error by failing to articulate specific, clear, and convincing reasons for rejecting plaintiff's subjective symptom testimony.
2. Whether the ALJ committed reversible error by failing to evaluate plaintiff's work-related abilities on a function-by-function basis in assessing the residual functional capacity.

(Pl.'s Br. 2.)

For the reasons discussed below, the Court finds that reversal and remand for further administrative proceedings are warranted for Issue One, based on the ALJ's failure to articulate specific, clear, and convincing reasons for rejecting plaintiff's subjective symptom testimony. Having found that remand is warranted, the Court declines to address Plaintiff's remaining argument. *See Hiler v. Astrue*, 687 F.3d 1208, 1212 (9th Cir. 2012) ("Because we remand the case to the ALJ for the reasons stated, we decline to reach [plaintiff's] alternative ground for remand."); *see also Augustine ex rel. Ramirez v. Astrue*, 536 F. Supp. 2d 1147, 1153 n.7 (C.D. Cal. 2008) ("[The] Court need not address the other claims plaintiff raises, none of which would provide plaintiff with any further relief than granted, and all of which can be addressed on remand.").

B. Applicable Law

When assessing a claimant's credibility regarding subjective symptom testimony or allegations, the ALJ must engage in a two-step analysis. *Trevizo v. Berryhill*, 871 F.3d 664, 678 (9th Cir. 2017). "First, the ALJ must determine whether the claimant has presented objective medical evidence of an underlying impairment 'which could reasonably be expected to produce the pain or other

1 symptoms alleged.” *Garrison*, 759 F.3d at 1014 (quoting *Lingenfelter*, 504 F.3d at
2 1035–36). “In this analysis, the claimant is not required to show ‘that her
3 impairment could reasonably be expected to cause the severity of the symptom she
4 has alleged; she need only show that it could reasonably have caused some degree
5 of the symptom.’” *Id.* (quoting *Smolen v. Chater*, 80 F.3d 1273, 1282 (9th Cir.
6 1996)). “Nor must a claimant produce ‘objective medical evidence of the pain or
7 fatigue itself, or the severity thereof.’” *Id.* (quoting *Smolen*, 80 F.3d at 1282).

8 If the claimant satisfies this first step, and there is no evidence of
9 malingering, the ALJ must provide specific, clear and convincing reasons for
10 rejecting the claimant’s testimony about the symptom severity. *Id.* at 1014–15; *see*
11 *also Robbins*, 466 F.3d at 883 (“[U]nless an ALJ makes a finding of malingering
12 based on affirmative evidence thereof, he or she may only find an applicant not
13 credible by making specific findings as to credibility and stating clear and
14 convincing reasons for each.”). “This is not an easy requirement to meet: ‘The
15 clear and convincing standard is the most demanding required in Social Security
16 cases.’” *Garrison*, 759 F.3d at 1015 (quoting *Moore v. Comm’r of Soc. Sec.*
17 *Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)). The ALJ must evaluate “the intensity
18 and persistence of those symptoms to determine the extent to which the symptoms
19 limit [the claimant’s] ability to perform work-related activities for an adult”
20 Social Security Ruling 16-3p, 2016 SSR LEXIS 4, at *4 (Mar. 16, 2016).

21 While the ALJ cannot “delve into wide-ranging scrutiny of the claimant’s
22 character and apparent truthfulness,” *Trevizo*, 871 F.3d at 678 n.5, the ALJ may
23 consider “prior inconsistent statements concerning the symptoms, and other
24 testimony by the claimant that appears less than candid; . . . unexplained or
25 inadequately explained failure to seek treatment or to follow a prescribed course of
26 treatment; and . . . the claimant’s daily activities,” *Ghanim v. Colvin*, 763 F.3d
27 1154, 1163 (9th Cir. 2014) (quoting *Smolen*, 80 F.3d at 1284). Inconsistencies
28 between a claimant’s testimony and conduct, or internal contradictions in the

1 claimant's testimony, also may be relevant. *Burrell v. Colvin*, 775 F.3d 1133,
2 1137–38 (9th Cir. 2014). In addition, the ALJ may consider “the claimant’s work
3 record and observations of treating and examining physicians and other third parties
4 regarding, among other matters, the nature, onset, duration, and frequency of the
5 claimant’s symptom; precipitating and aggravating factors; [and] functional
6 restrictions caused by the symptoms” *Smolen*, 80 F.3d at 1284. However, it is
7 improper for an ALJ to reject subjective testimony based “solely on a lack of
8 objective medical evidence to fully corroborate’ the claimant’s allegations.” *Bray*
9 *v. Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1227 (9th Cir. 2009) (quoting
10 *Bunnell v. Sullivan*, 947 F.2d 341, 345 (9th Cir. 1991)).

11 The ALJ must make “a credibility determination with findings that are
12 sufficiently specific to permit the court to conclude that the ALJ did not arbitrarily
13 discredit claimant’s testimony.” *Tommasetti v. Astrue*, 533 F.3d 1035, 1039 (9th
14 Cir. 2008) (quoting *Thomas v. Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002)); *see*
15 *Brown-Hunter v. Colvin*, 806 F.3d 487, 493 (9th Cir. 2015) (“A finding that a
16 claimant’s testimony is not credible ‘must be sufficiently specific to allow a
17 reviewing court to conclude the adjudicator rejected the claimant’s testimony on
18 permissible grounds and did not arbitrarily discredit a claimant’s testimony
19 regarding pain.’” (quoting *Bunnell*, 947 F.2d at 345–46)). Although an ALJ’s
20 interpretation of a claimant’s testimony may not be the only reasonable one, if it is
21 supported by substantial evidence, “it is not [the court’s] role to second-guess it.”
22 *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001).

23 24 **C. Background**

25 Plaintiff is 59 years old. (AR 73.) She was 51 on the alleged onset date and
26 56 years old on the date last insured. (*Id.*) She has a tenth-grade education. (AR
27 41, 449.) From 2000 to 2016, Plaintiff worked at multiple locations of the fast-food
28 chain restaurant, Subway; she baked bread, did inventory, interacted with

1 customers, cleaned, made sandwiches, supervised other employees, and lifted 25-
2 pound boxes of syrup for the soda. (AR 449–50, 453–56.) She was on her feet all
3 day long. (AR 450.) She stopped working because of back pain that radiated into
4 her legs. (AR 450–51.)

5 An MRI in September 2016 showed that Plaintiff had degenerative joint
6 disease at L2-3 and L4-5, with severe foraminal stenosis and a right synovial cyst at
7 L5-S1 on the right side. (AR 268.) Plaintiff’s pain management physician, Dr.
8 Magued Fadly, referred her to Dr. Anthony Virella, who performed lumbar
9 laminectomy surgery at L4 and L5 on December 30, 2016. (AR 266; 270–71.) Dr.
10 Virella’s report indicates that the procedure included a “difficult dissection,” that
11 there was “severe compression” of the discs “out laterally,” “severe lateral recess
12 stenosis,” and “severe scarring [that] required tedious neurosurgical dissection.”
13 (AR 271.)

14 About four months later, in April 2017, Dr. Virella noted that Plaintiff was
15 “still in a considerable amount of low back pain with neurogenic claudication” and
16 had “failed conservative care.” (AR 269.) An MRI showed L2-3 and L3-4 stenosis
17 and scarring where the L4-5 laminectomy had been performed. (*Id.*) Dr. Virella
18 recommended performing a “meniscectomy L2-3, L3-4 with redo exploration of
19 previous laminectomy at L4-5 and scar dissection.” (*Id.*) Plaintiff was warned of
20 specific risks of the surgery including bleeding, infection, cerebrospinal fluid leak,
21 failure to cure, no improvement in symptoms, and nerve root injury. (*Id.*)
22 However, Plaintiff was unsure if she wanted to go through with the procedure (AR
23 290), and no medical records have been presented to suggest that she ever had a
24 second procedure with Dr. Virella.

25 From October 2017 through September 2018, Plaintiff received multiple
26 epidural steroid injections in different areas of her back, including in her tailbone
27 (AR 759, 764, 769), sacroiliac joints (AR 760, 762, 767–68), and lumbar spine (AR
28 754–58, 761, 763, 765–66). Despite these, Plaintiff continued to have lower back

1 pain into 2018. (*See, e.g.*, AR 316, 318, 322.) To treat the continuing pain, Dr.
2 Fadly implanted the leads for a spinal cord stimulator on December 14, 2018 and
3 implanted the device on December 31, 2018. (AR 751–52.) Plaintiff also
4 continued with her epidural steroid injection treatment regimen. (AR 750, 753.)

5 Plaintiff testified that at some point, her primary care physician expressed
6 concern about the number of epidural shots Plaintiff was receiving, so she stopped
7 getting them. (AR 457.) Even the ALJ remarked that she had “never seen so
8 many” epidural shots. (*Id.*) Plaintiff also testified that she lost medical insurance
9 around 2021, which was another reason she stopped going to see Dr. Fadly. (AR
10 458.) She also stopped taking oxycodone when she lost her insurance. (AR 459–
11 60.)

12 Plaintiff testified that she cannot stand for long—“maybe not even an
13 hour”—at a time. (AR 55.) She can walk for only 15 minutes and then has to stop
14 for 10–20 minutes. (*Id.*) Sitting causes her pain, and she can only sit for about 30
15 minutes at a time. (*Id.*) The most she can lift is a bag with a few groceries that she
16 estimates weighs less than 10 pounds. (AR 56.) She does not believe that she
17 would be able to perform her previous job, since “I can’t stand too long and I can’t
18 sit too long because of my back. And the pain goes through my waist all the way
19 do[wn]to my feet.” (AR 51.)

20 21 **D. Analysis**

22 At the first step of the two-step evaluation, the ALJ found that Plaintiff’s
23 “medically determinable impairments could reasonably be expected to cause the
24 alleged symptoms.” (AR 413.) At the second step, however, the ALJ found that
25 Plaintiff’s “statements concerning the intensity, persistence and limiting effects of
26 these symptoms are not entirely consistent with the medical evidence and other
27 evidence in the record for the reasons explained in this decision.” (*Id.*) As the ALJ
28 found no evidence of malingering, she was required to provide specific, clear and

1 convincing reasons for rejecting Plaintiff’s subjective symptom statements. *See*
2 *Garrison*, 759 F.3d at 1014–15. The Court may review only those reasons that the
3 ALJ specifically cited as grounds to reject Plaintiff’s subjective symptom
4 testimony. *See Connett v. Barnhart*, 340 F.3d 871, 874 (9th Cir. 2003) (“We are
5 constrained to review the reasons the ALJ asserts.”); *Garrison*, 759 F.3d at 1010
6 (“We review only the reasons provided by the ALJ in the disability determination
7 and may not affirm the ALJ on a ground upon which he did not rely.”).

8 Plaintiff argues that the ALJ completely failed to identify any of her
9 testimony or statements as not credible and asserts that this is reversible error.
10 (Pl.’s Br. 5; Pl.’s Reply 1.) Defendant, on the other hand, argues that the ALJ
11 “reasonably discounted” Plaintiff’s subjective statements on the following grounds:
12 (1) “conflicts between Plaintiff’s statements and those of the medical sources”
13 (Def.’s Br. 12); (2) Plaintiff’s treatment history and gaps in her treating regimen (*id.*
14 at 15–17); and, primarily, (3) the objective medical evidence (*id.* at 9–12).

15 The Court agrees with Plaintiff that the ALJ did not explicitly discount
16 Plaintiff’s testimony about her subjective symptoms. In conducting the two-step
17 evaluation process, the ALJ identified only two sources in which Plaintiff described
18 her symptoms: an Exertion Questionnaire submitted in support of her applications
19 and Plaintiff’s testimony at the March 2023 hearing. (AR 413.) The ALJ did not
20 mention Plaintiff’s testimony at the January 2020 hearing. (*See* AR 413–16.) Nor
21 did the ALJ explicitly state that she found either of the two sources that were
22 identified not to be credible.

23 After summarizing the symptoms discussed in the two identified sources, the
24 ALJ recited the essentially boilerplate, second-step conclusion that Plaintiff’s
25 “statements concerning the intensity, persistence and limiting effects of these
26 symptoms are not entirely consistent with the medical evidence and other evidence
27 in the record for the reasons explained in this decision.” (*Id.*) Thereafter, the ALJ
28 simply summarized the medical evidence of record related to Plaintiff’s health

1 issues from 2016 through 2022, along with the medical opinion evidence, without
2 further mention of Plaintiff’s subjective symptom testimony or reports. (*See* AR
3 413–16.) A mere summary of the medical evidence, however, is not the same as
4 providing specific, clear and convincing reasons for discounting Plaintiff’s
5 testimony. *See Lambert v. Saul*, 980 F.3d 1266, 1278 (9th Cir. 2020) (“[P]roviding
6 a summary of medical evidence . . . is not the same as providing clear and
7 convincing reasons for finding the claimant’s symptom testimony not credible.”
8 (quoting *Brown-Hunter*, 806 F.3d at 494)).

9 Defendant cites *Smartt v. Kijakazi*, 53 F.4th 489, 499 (9th Cir. 2022), for the
10 proposition that the ALJ does not need to address all of Plaintiff’s statements, line-
11 by-line, but merely needs to “show his work.” (Def.’s Br. 8, 11.) The Court does
12 not disagree with this proposition. However, the ALJ here did not “show [her]
13 work,” as did the ALJ in the *Smartt* case. There, the ALJ explicitly “identified a
14 direct contradiction in [the claimant’s] testimony” as well as “specific discrepancies
15 between [the claimant’s] testimony and the objective medical evidence.” *Smartt*, 53
16 F.4th at 497–98. Here, the ALJ did not explicitly identify any such contradiction or
17 discrepancy. Thus, the ALJ’s opinion lacks the necessary showing and does not
18 include “a credibility determination with findings that are sufficiently specific to
19 permit the court to conclude that the ALJ did not arbitrarily discredit [Plaintiff’s]
20 testimony.” *Tommasetti*, 533 F.3d at 1039.

21 It is well-settled that a reviewing court may not construe an ALJ’s general
22 findings from the medical record as reasons to reject a claimant’s subjective
23 symptom testimony if the ALJ does not explicitly tie such findings to the testimony.
24 *See Burrell*, 775 F.3d at 1139 (rejecting the government’s argument that claimant’s
25 history of treatment for headaches is a specific, clear, and convincing reason to
26 support the ALJ’s credibility finding because “[a]lthough the ALJ made findings
27 . . . concerning [c]laimant’s treatment for headaches, he never stated that he rested
28 his adverse credibility determination on those findings”); *Potter v. Comm’r of Soc.*

1 *Sec.*, 571 F. App'x 569, 572 (9th Cir. 2014) (“Problematically, the ALJ did not
2 clearly tie [the claimant's] failure to pursue the [treatment] to his credibility.”).
3 Accordingly, none of the reasons advanced by Defendant can constitute a specific,
4 clear and convincing reason supported by substantial evidence for discounting
5 Plaintiff’s subjective symptom testimony.

6 Further, even if the Court could look past the ALJ’s failure to make an
7 explicit credibility finding and to tie that finding to specific evidence, the reasons
8 offered by Defendant as support for the ALJ’s decision are not legally sufficient to
9 discount Plaintiff’s subjective symptom testimony. Each of these reasons is
10 discussed below.

11
12 a. *Conflicts Between Plaintiff’s Statements and Those of the*
13 *Medical Sources*

14 Defendant argues that the ALJ “reasonably relied on ‘other’ important
15 evidence to conclude that Plaintiff’s subjective complaints were not consistent with
16 her claim of disability. . . . For instance, the ALJ properly considered the conflicts
17 between Plaintiff’s statements and those of the medical sources.” (Def.’s Br. 12.)
18 However, Defendant never provides any concrete examples. The following
19 sentence of Defendant’s brief reads, “[f]or instance, the ALJ rejected the assessment
20 of Dr. Fadley [sic] who stated that Plaintiff would be unable to sit or stand for ‘a
21 long period of time’ as this would cause flare ups.” (*Id.* at 13.) This is an example
22 of a medical source that is *consistent* with Plaintiff’s statements, not one that shows
23 a conflict with any of Plaintiff’s statements. Defendant then proceeds to discuss the
24 opinions provided by various medical experts and why the ALJ found some more
25 credible than others. (*Id.* at 13–14.) While Defendant points to conflicts between
26 experts, and conflicts between experts and the medical record, there is no mention
27 of any conflict with Plaintiff’s statements. In fact, Plaintiff’s “subjective
28 complaints” are simply not discussed.

1 Reviewing the ALJ’s opinion, the closest the Court can find to any mention
2 of an inconsistency between Plaintiff’s statements and the medical sources are
3 references to Plaintiff’s use of a cane. At the March 2023 hearing, the ALJ brought
4 up the fact that Plaintiff “came in with a cane.” (AR 457.) Plaintiff testified that
5 the cane had not been prescribed by a doctor, and that she had bought it herself and
6 only started using it about six months prior to the hearing. (AR 457–58.) She did
7 not testify that she was unable to walk without the cane, just that she found it
8 helpful, stating that it “helps me to stand because . . . it takes me awhile when I get
9 up. . . . for me to get ready to walk.”⁴ (AR 457.) The ALJ asked if the cane
10 “help[ed] with stiffness,” and Plaintiff replied, “[y]es.” (AR 458.) The ALJ’s
11 opinion notes that Plaintiff “testified that she started using a cane about six months
12 ago” and that “she purchased the cane on her own.” (AR 413.)

13 The opinion also notes that the examining orthopedist, Dr. J. Chuang, who
14 examined Plaintiff on July 8, 2022, noted that Plaintiff “reported using a straight
15 cane for long-distance walking beyond 50 feet.” (AR 414.) The ALJ went on to
16 summarize Dr. Chuang’s observations of Plaintiff as “able to walk without the cane,
17 though she reportedly exhibited slow swing and stance phases and had difficulty
18 heel-toe walking, squatting, and rising.” (AR 414–15.) Dr. Chuang’s report states
19 that Plaintiff was “able to walk a short distance” without the cane, though she
20 walked “with a mild limp and antalgia.” (AR 737.) The ALJ, however, found that
21 Dr. Chuang’s opinion was generally not persuasive, and noted that “the other
22 medical records in this case show no indication that the claimant has required a
23 cane,” especially “the recent chiropractic treatment records” documenting

24 ///

25
26 ⁴ The Court notes that this is consistent with Plaintiff’s testimony three years earlier,
27 when, though she was not using a cane at that time, she testified that “it’s hard for
28 me to stand up and start walking. I have to, like, stand up and wait for a little bit, and
then start walking.” (AR 67.)

1 Plaintiff's "chiropractic treatment spann[ing] the period from April 2022 to August
2 2022." (AR 415.)

3 The Court notes, initially, that Plaintiff's chiropractic treatment actually
4 ended on July 11, 2022, as the one record with an August 2022 date is a summary
5 of her treatment written after the fact. (*See* AR 785 ("Patricia was treated in this
6 office from April 4, 2022 to July 11, 2022.")) July 11, 2022 was around the same
7 time that Plaintiff was seen by Dr. Chuang, so it is likely that Plaintiff's cane use
8 started before her chiropractic treatment ended. But while it is true that there is no
9 mention of her cane use in those records, there is nothing inconsistent with such
10 use, either. There is only a single document in the record from that treatment in a
11 format that could have included any reference to the use of a cane or other mobility
12 device—the summary of her care dated August 10, 2022, written a month after her
13 treatment ceased. (AR 782–86.) While it is conceivable that this record could have
14 included a reference to Plaintiff's use—or lack of use—of a cane, the topic is
15 simply not addressed, one way or the other. As to the fact that no other medical
16 records mention Plaintiff's use of a cane, all other records presented pre-date the
17 period when Plaintiff testified she began using the cane, so the lack of references to
18 such a device are hardly inconsistent with her testimony.

19 Even if the medical sources had been obviously inconsistent with Plaintiff's
20 testimony about her cane use, however, the fact remains that the ALJ did not
21 actually state that she found Plaintiff's entire testimony not to be credible because
22 of such an inconsistency. The Court would be required to assume that, because the
23 ALJ viewed the medical sources as inconsistent with Plaintiff's testimony regarding
24 her cane use, the ALJ found that Plaintiff's testimony regarding her symptoms was,
25 in general, not credible. This is not "sufficiently specific" to allow this Court to
26 conclude that the ALJ rejected Plaintiff's testimony on permissible grounds and did
27 not arbitrarily discredit her testimony regarding pain. *See Brown-Hunter*, 806 F.3d
28 at 493.

b. Documented Treatment and Gaps in Treatment

Defendant states that the “ALJ also reasonably considered Plaintiff[‘s] treatment history,” and notes that “[g]aps in a claimant’s treating regimen may serve as another . . . clear and convincing reason for rejecting a claimant’s symptom severity.” (Def.’s Br. 15.)

A claimant’s “unexplained, or inadequately explained, failure to seek treatment or follow a prescribed course of treatment” is a factor that “can cast doubt on the sincerity of the claimant’s pain testimony.” *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989). However, an ALJ also must “consider and address reasons for not pursuing treatment that are pertinent to an individual’s case.” SSR 16-3P, 2016 SSR LEXIS 4, at *25. “Disability benefits may not be denied because of the claimant’s failure to obtain treatment he cannot obtain for lack of funds.” *Orn*, 495 F.3d at 638 (citation omitted). In *Orn*, the Ninth Circuit determined the claimant’s failure to receive medical treatment during the period that he had no medical insurance could not support an adverse credibility finding. *Id.*

Here, Defendant points to the fact that the ALJ “observed that Plaintiff had back surgery in December 2016,” but “did not proceed with exploratory surgery.” (Def.’s Br. 15.) This appears to relate to the records of Dr. Anthony Virella, who performed Plaintiff’s lumbar laminectomy surgery on December 30, 2016. (AR 270–71.) Dr. Virella’s records reflect that about four months after this surgery, in April 2017, Plaintiff was “still in a considerable amount of low back pain” and had “failed conservative care.” (AR 269.) Dr. Virella recommended performing another surgery. (*Id.*) However, Plaintiff reported being unsure whether she wanted to go through with the procedure (AR 290), and there is no evidence to suggest that she underwent a second procedure with Dr. Virella. The ALJ’s opinion implies, but does not explicitly state, that the ALJ found the lack of evidence of a second surgery with Dr. Virella to cast doubt on Plaintiff’s testimony that she had two surgeries. (See AR 414 (“Although the claimant testified at the hearing that she

1 underwent two spinal surgeries, there is no operative report in the file documenting
2 a second surgery in 2017.”.) However, while Plaintiff was clearly confused at the
3 hearing about the exact procedures she had had, she did testify that she believed the
4 implantation of the spinal stimulator (by Dr. Fadly in December 2018) was the
5 second of the two surgical procedures she had undergone. (AR 452.) Her
6 testimony that she had two back surgeries is therefore not inconsistent with the
7 medical record: she had the lumbar laminectomy surgery with Dr. Virella in
8 December 2016 (AR 270–71) and the spinal cord stimulator implant with Dr. Fadly
9 in December 2018 (AR 751–52).

10 Defendant also points to the fact that Plaintiff stopped receiving epidural
11 injections in 2019. (Def.’s Br. 16.) However, Plaintiff testified that her primary
12 care doctor had warned her that “it was not too good to have all these epidural
13 shots.” (AR 457.) The ALJ herself “noted, with some concern, I don’t think I’ve
14 ever seen so many epidurals administered for an individual.” (AR 443.) Defendant
15 cannot mean to argue that a claimant must choose between following a doctor’s
16 advice to discontinue a potentially dangerous treatment or persisting with that
17 treatment against medical advice in order to obtain benefits.

18 Defendant also notes that Plaintiff testified she stopped taking oxycodone
19 when she lost her health insurance and could not afford to pay out-of-pocket for the
20 prescription. (Def.’s Br. 16; see AR 459–60.) However, the ALJ’s opinion
21 contains no reference either to the fact that Plaintiff ever took oxycodone or to the
22 fact that she stopped taking it. (*See generally* AR 413–16.) Perhaps Defendant’s
23 reference to the fact that Plaintiff stopped taking the drug is intended to bolster the
24 ALJ’s conclusion that there was “no evidence of additional invasive procedures or
25 further specialized treatment” after early 2019. (AR 414.) However, while
26 Defendant mentions and attempts to rebut the impact of Plaintiff’s testimony that
27 she had lost her health insurance for some time (*see* Def.’s Br. 15–16), the ALJ did
28 not acknowledge or address this fact, whether in reference to Plaintiff’s medication

1 use, the cessation of epidural injections, or Plaintiff's decision not to undergo a
2 second risky, "exploratory" surgery with Dr. Virella in 2017 that might not have
3 been any more successful than the previous procedure. (*See generally* AR 413–16.)
4 The ALJ therefore did not "consider and address [Plaintiff's] reasons for not
5 pursuing treatment" as required. SSR 16-3P, 2016 SSR LEXIS 4, at *25. Further,
6 to the extent Plaintiff's treatment decisions were based on her lack of insurance and
7 inability to pay out-of-pocket, "[d]isability benefits may not be denied because of
8 the claimant's failure to obtain treatment he cannot obtain for lack of funds." *Orn*,
9 495 F.3d at 638 (citation omitted).

10
11 c. Objective Medical Evidence

12 Finally, Defendant contends that the ALJ "found that the objective medical
13 evidence undercut Plaintiff's allegations of disabling symptoms and limitations."
14 (Def.'s Br. 9.) It is unquestionably true that an ALJ may consider whether a
15 claimant's subjective symptoms are supported by objective medical evidence, and
16 that an ALJ may reject a claimant's subjective testimony if it is inconsistent with
17 the objective medical evidence. *See Carmickle v. Comm'r, Soc. Sec. Admin.*, 533
18 F.3d 1155, 1161 (9th Cir. 2008) ("Contradiction with the medical record is a
19 sufficient basis for rejecting the claimant's subjective testimony."). However, while
20 an ALJ may consider lack of medical evidence when analyzing Plaintiff's
21 subjective allegations, "lack of medical evidence cannot form the sole basis for
22 discounting pain testimony." *Burch*, 400 F.3d at 681; *Light v. Soc. Sec. Admin.*,
23 119 F.3d 789, 792 (9th Cir. 1997) ("[A] finding that the claimant lacks credibility
24 cannot be premised wholly on a lack of medical support for the severity of his
25 pain."); *Bunnell*, 947 F.2d at 345 ("[A]n adjudicator may not reject a claimant's
26 subjective complaints based solely on a lack of objective medical evidence to fully
27 corroborate the alleged severity of pain."); *Robbins*, 466 F.3d at 883 ("While an
28 ALJ may find testimony not credible in part or in whole, he or she may not

1 disregard it solely because it is not substantiated affirmatively by objective medical
2 evidence.”).

3 Here, again, the ALJ’s opinion only implicitly finds that Plaintiff’s subjective
4 statements are not credible when compared to the medical evidence. Explicitly, the
5 ALJ notes that “[t]he progress notes obtained from her primary care physician, Dr.
6 Xu, reflect only occasional mentions of back pain and do not reflect any abnormal
7 clinical findings related to her spinal condition.” (AR 414.) In fact, of the twenty-
8 six office visits to Dr. Xu reflected in the records produced, twenty-four of them
9 contain a reference to one or more of the following: (1) a diagnosis of lumbago, (2)
10 reports of back pain, (3) mention of an oxycodone prescription; or (4) reference to
11 Plaintiff’s ongoing treatment by a pain management specialist. (AR 302–55; AR
12 728–29.) Of the two visit notes that do not include such a reference, one is from
13 March 22, 2016, nine months before Plaintiff stopped working (AR 354–55), and
14 one is a pre-operative visit focused on whether Plaintiff was cleared for hernia
15 surgery in September 2019 (AR 302–03). Dr. Xu’s records therefore do not appear
16 to be in conflict with Plaintiff’s subjective symptom testimony.

17 The ALJ also notes that Plaintiff “did not exhibit any serious clinical deficits”
18 when examined by a consulting orthopedist in November 2017, that her car accident
19 in March 2022 did not appear to have “caused a chronic worsening of [Plaintiff’s]
20 back impairment,” and that Plaintiff did not “exhibit serious deficits in connection
21 with an updated orthopedic consultative examination performed . . . in July 2022.”
22 (AR 414.) In fact, this last item, the July 2022 consulting examination, did include
23 some abnormal findings. The ALJ noted that, during this examination, Plaintiff:

24 reportedly exhibited slow swing and stance phases and
25 had difficulty heel-toe walking, squatting, and rising.
26 Additionally, Dr. Chuang found the claimant to have
27 paraspinal tenderness, decreased range of motion of the
28 back, and positive straight leg raising tests bilaterally. A
neurologic examination reportedly revealed mild
weakness (4+/5) in the bilateral lower extremities, normal

1 motor strength in the bilateral upper extremities, and
2 decreased sensation in the bilateral L4 to S1 dermatomes.
3 (AR 414–15.) Again, this is not inconsistent with Plaintiff’s subjective symptom
4 testimony.

5 At most, the objective medical evidence cited by the ALJ shows that some
6 records do not provide affirmative support for Plaintiff’s symptoms. No records
7 discussed are particularly inconsistent with those symptoms. Thus, despite
8 Defendant’s contention that the ALJ “found that the objective medical evidence
9 undercut Plaintiff’s allegations of disabling symptoms and limitations” (Def.’s Br.
10 9), the ALJ’s opinion relies on the lack of affirmative support rather than the
11 presence of directly contradictory evidence. But even assuming the record supports
12 the ALJ’s reasoning regarding the lack of support from objective medical evidence,
13 the ALJ did not identify any other clear and convincing reason, supported by
14 substantial evidence, to discount Plaintiff’s subjective symptom statements.
15 Standing alone, the purported lack of support from objective medical evidence is
16 not a legally sufficient reason to discount Plaintiff’s symptom testimony.

17
18 * * *

19 The subjective symptom evaluation standard requires that an ALJ “show his
20 work.” *Smartt*, 53 F.4th at 499. In this instance, the ALJ did not provide the “sort
21 of explanation or the kind of ‘specific reasons’ we must have in order to review the
22 ALJ’s decision meaningfully, so that we may ensure that the claimant’s testimony
23 was not arbitrarily discredited,” nor can the error be found harmless. *Brown-*
24 *Hunter*, 806 F.3d at 494. Because Plaintiff’s subjective symptom testimony was
25 not rejected for clear and convincing reasons based on substantial evidence,
26 reversal is warranted.

27 ///

28 ///

1 **E. Remand for Further Proceedings**

2 The decision whether to remand for further proceedings or order an
3 immediate award of benefits is within the district court's discretion. *See Harman v.*
4 *Apfel*, 211 F.3d 1172, 1178 (9th Cir. 2000). Where no useful purpose would be
5 served by further administrative proceedings, or where the record has been fully
6 developed, it is appropriate to exercise this discretion to direct an immediate award
7 of benefits. *See id.* at 1179 (“[T]he decision of whether to remand for further
8 proceedings turns upon the likely utility of such proceedings.”). However, where,
9 as here, the circumstances of the case suggest that further administrative review
10 could remedy the Commissioner's errors, remand is appropriate. *See McLeod v.*
11 *Astrue*, 640 F.3d 881, 888 (9th Cir. 2011). Specifically, remand is warranted here
12 for reconsideration of Plaintiff's symptom statements regarding her back pain
13 because the ALJ's failure to provide legally sufficient reasons for discounting such
14 statements in the decision prevents this Court from meaningfully determining
15 whether the decision is supported by substantial evidence. *See Treichler*, 775 F.3d
16 at 1103 (“Because ‘the agency's path’ cannot ‘reasonably be discerned,’ we must
17 reverse the district court's decision to the extent it affirmed the ALJ's credibility
18 determination.” (citation omitted)).

19
20 **V. ORDER**

21 The Court **ORDERS** that judgment be entered reversing the decision of the
22 Commissioner and remanding this matter for further administrative proceedings.

23 **IT IS SO ORDERED.**

24
25 DATED: February 21, 2025

26 
27 _____
28 HONORABLE MARIA A. AUDERO
UNITED STATES MAGISTRATE JUDGE